

DECISION



13635 PLM-27
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-196462

DATE: May 5, 1980

MATTER OF: Alan Wojewodzki

DIGEST: Member of an Army Reserve unit who was given general discharge which was later upgraded to honorable and who was told not to attend inactive duty drill periods or active duty for training while discharge proceedings were in progress is not entitled to pay for the period in which he did not attend the drill periods and the active duty for training. A military member's entitlement to pay is based on statute and the relevant statutes, 37 U.S.C. §§ 206(a), 204(a)(2), require a Reserve member to attend meetings or perform other equivalent duty or be ordered to active duty or active duty for training in order to be paid. See B-187767, December 23, 1976.

Mr. Alan Wojewodzki appeals the Claims Division [denial of his claim] for pay in connection with inactive duty training and active duty for training while he was a member of the Army Reserve. Since the claimant did not participate in the drills or perform active duty for training, there exists no authority upon which payment could be authorized.

As a result of the claimant's request to be placed in an active Reserve status, the Army assigned him to the 486th Engineer Company of the Army Reserve, effective on April 2, 1974. He attended April drill periods and received the appropriate remuneration. However, before attending the scheduled drill periods in May, he was told not to attend any future drill periods because the Army was conducting an investigation concerning his eligibility to remain in the Army Reserve. From May to December of 1974, Mr. Wojewodzki was not authorized nor did he attend any drill periods or the 2-week period of active duty for

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training. During this time, the Army had been conducting an investigation and concluded that the claimant would have to be discharged; however, since he was scheduled for discharge in March 1975, the Army allowed the claimant's enlistment to expire rather than begin a process which might extend beyond March. Mr. Wojewodzki received a general discharge on March 31, 1975, which was subsequently upgraded to an honorable discharge.

Apparently on the basis of the upgrading of his discharge, Mr. Wojewodzki filed a claim for the pay he would have received for the drill periods and the period of active duty for training which the Army told him not to attend. The claimant is also basing his claim at least in part on our decision Seaman Recruit Domingo Jose Diaz, B-184585, November 25, 1975, 55 Comp. Gen. 507, wherein we found that an active duty military member was entitled to pay and allowances although performing no military duties. The claimant believes the case to be applicable to his situation since he was prohibited by Army authorities from attending scheduled duty periods.

At the outset it should be noted that a change in the character of a discharge, by itself, has no bearing on a member's entitlements during any period prior to the discharge.

A member of the Reserves is entitled to compensation for inactive duty training under 37 U.S.C. § 206(a). That section provides as follows:

"(a) Under regulations prescribed by the Secretary concerned * * * a member of a reserve component of a uniformed service who is not entitled to basic pay under section 204 of this title, is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours, including that performed on a

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Sunday or holiday, or for the performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary may prescribe."

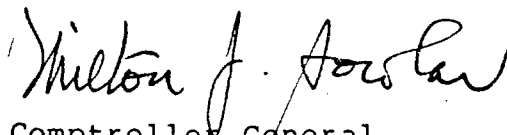
On the basis of the foregoing, it is clear that unless a member of the Reserves meets the requirements of this provision by actually attending the scheduled periods of instruction or performs other equivalent duty, he is not entitled to compensation for inactive duty training drill periods.

Likewise a member of a Reserve component is not entitled to active duty pay and allowances for periods of active duty for training unless he is ordered to active duty by competent authority. See 37 U.S.C. § 204(a)(2).

The Diaz case cited by Mr. Wojewodzki is not applicable in this case, since the member in that case was ordered to active duty and was considered as remaining in that status until released, and in such status he is entitled to active duty pay and allowances. Mr. Wojewodzki was never ordered to active duty as a Reserve member and therefore never attained a status which would entitle him to receive pay and allowances whether or not he actually performed military duty.

Accordingly, Mr. Wojewodzki is not entitled to any compensation for the inactive duty training periods or the active duty for training period performed by his Reserve unit which he did not attend, since he was in fact prohibited from attendance by competent authority. See B-187167, December 23, 1976, and Van Zante v. United States, 62 F. Supp. 310, 311 (Ct. Cl. 1945).

Accordingly, the settlement of our Claims Division denying his claim must be sustained.



For the Comptroller General
of the United States